

July 2003 Unified Program Newsletter

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Cal/EPA

Summary Report Training Using the Web

For those who were unable to attend the summary report training, Cal/EPA will be providing the same training using a new web technology (MeetingPlace). With MeetingPlace, training sessions can take place online. Anyone can participate using a phone and a web browser to view and discuss documents in real time. A notice with scheduled dates and other details regarding these sessions is attached.

Department of Toxic Substances Control

Emergency Regulations – SB 489

On July 1, 2003, the Department of Toxic Substances Control (DTSC) adopted emergency regulations to implement Senate Bill 489 (2002). These regulations establish new reporting requirements for transporters and facilities that handle hazardous waste of concern, which are defined as explosive materials, poisonous materials, or poisonous gases.

These regulations do not impact generators, although a generator's shipments of hazardous waste of concern will be under higher scrutiny for accuracy of the manifest and volume amounts. DTSC may refer some reports to CUPAs if the generator caused the missing hazardous waste of concern or manifest discrepancy.

On and after the effective date of emergency regulations (July 11, 2003), any transporter or facility handling these hazardous wastes of concern must:

- (1) Report missing hazardous waste of concern and manifest discrepancies by telephone to DTSC within one day and submit a written report within 5 days of the occurrence; and

(2) Submit a Disclosure Statement and fingerprints for a criminal background check, unless exempted as a qualifying publicly traded corporation. (Facilities must submit this information by January 1, 2004. Transporters must submit it with their 2004 registration renewal application.)

The following documents will be available on the DTSC website www.dtsc.ca.gov under Laws, Regulations and Policies, DTSC Emergency Regulations (the documents are still going to print and web links are not yet established):

Senate Bill 489
Hazardous Waste of Concern Emergency Regulations
List of Hazardous Wastes of Concern
Transporter Letter-July 7, 2003
Facility Letter-July 8, 2003
Code of Federal Regulations, title 49
Hazardous Materials Table
Facility Disclosure Statement
Transportation Disclosure Statement

If you have questions, please contact your DTSC CUPA Liaison or Ann Carberry at acarberr@dtsc.ca.gov.

DTSC's Household Hazardous Waste Program Moves to Sacramento

Please note that effective July 1, 2003, management of DTSC's Household Hazardous Waste Program (HHW) has moved to DTSC's Headquarters office in Sacramento. The HHW program contact in Sacramento is Ms. Cheryl Closson, Hazardous Substances Scientist. Ms. Closson has extensive experience working with local jurisdictions on waste management issues. Please forward all your inquiries, variance requests, and Form 303s to Ms. Closson:

Ms. Cheryl Closson
Regulatory Program Development Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 "I" Street, 11th Floor
P.O. Box 806
Sacramento, CA 95812-0806
Telephone number: (916) 324-6564
Fax number: (916) 327-4495
E-mail address: cclosson@dtsc.ca.gov

New Inflation Factors

Recently published in the U.S. Department of Commerce Survey of Current Business was the Implicit Price Deflator (IDP) for Gross National Product. The inflation factor is the result of dividing the latest published annual IDP by the IDP of the previous year. The current inflation factor to be used when adjusting closure cost estimates is 1.011%. Applying the inflation factor is a matter of multiplying the closure cost estimate by the inflation factor then adding that number to the closure cost estimate to get the adjusted closure cost estimate. Permit by Rule and Conditionally Authorized facilities are required to adjust their closure cost estimates for inflation by March 1st of every year though it can be done earlier.

DTSC Memorandum on Closure Costs for Permit by Rule and Conditionally Authorized Facilities

The DTSC Office of Legal Council (OLC) recently clarified the issue of whether closure cost estimates for Permit by Rule (PBR) and Conditionally Authorized (CA) Facilities should be based on the closure of individual units or the aggregate of all PBR and CA units at the facility. Previously some facilities have been estimating their closure costs based on the closure cost of individual units rather than the aggregate of all PBR and CA units in order meet the exemption from providing financial assurance when closure costs are equal or less than \$10,000. The OLC concluded that the closure cost estimate must include the

aggregate of all PBR and CA individual units at the facility. The attached Memorandum of June 30, 2003 provides further details on the subject.

Lab Pack Management at Schools Hazardous Waste Collection, Consolidation, and Accumulation Facilities

The Department of Toxic Substances Control (DTSC) conducted a public hearing on June 16, 2003 for proposed regulations R-02-11, titled "Lab Pack Management at Schools Hazardous Waste Collection, Consolidation, and Accumulation Facilities (SHWCCAFs) under Permit by Rule (PBR). The 45-day public comment for the proposed regulations ended June 16, 2003. The proposed regulations would allow, under specified conditions, K-12 school science laboratory waste lab packs to be reopened and repackaged as necessary at the SHWCCAF to provide for efficient and economic, as well as safe management and transport of the wastes to authorized recycling or disposal facilities.

SB 606 Regulation Package

The Recyclable Hazardous Waste Regulations were approved by the Office of Administrative Law and submitted to the Secretary of State to become effective July 12, 2003.

The proposed regulations adopt a list of specified hazardous wastes that DTSC finds economically and technologically feasible to recycle. The proposed regulations also allow DTSC, after notifying the generator disposing the recyclable hazardous waste, to impose a disposal fee of five times the applicable disposal fee rate on generators who dispose of their recyclable hazardous waste rather than recycle it.

Fact Sheet on Managing Universal Waste in California

A new fact sheet on California's universal waste regulations has been posted on DTSC's website. The fact sheet, titled "Managing Universal Waste in California," provides an overview of which hazardous wastes have been designated as universal wastes in the state and discusses the requirements for persons who handle, transport, dispose of, and recycle these wastes.

http://www.dtsc.ca.gov/PublicationsForms/HWM_FS_UWR.pdf

State Water Resources Control Board

Inspectors' Workshop – July 15, 2003

The UST monthly inspectors' workshop will take place on July 15, 2003, at the Cal EPA Headquarters, 1001 I Street, Sacramento. <http://www.swrcb.ca.gov/cwphome/ust/docs/workshop/info.html>

Local Guidance (LG) letter 162

LG 162 explains the new installation and monitoring requirements established by AB 2481 for Underground Storage Tanks Installed on or After July 1, 2003:

<http://www.swrcb.ca.gov/ust/docs/lgs/lg162.pdf>

Legislation has been proposed to postpone several of the new requirements:

http://www.swrcb.ca.gov/ust/docs/lgs/ab1702_info.html

Soliciting Comments on UST Regulations

The State Water Resources Control Board is soliciting comments on proposed amendments to the Underground Storage Tank (UST) regulations.

http://www.swrcb.ca.gov/ust/docs/red_tag_regs/index.html

State Fire Marshal

HMMP/HMIS Guidance

The HMMP/HMIS plan requirements of subdivision (b) and (c) of section 80.103 of the CFC (now CFC 8001.3.2 and 8001.3.3) shall be consolidated into the CUPA to ensure coordination and consistency (HSC section 25404(c)(6)). The following guidance may be used when coordinating the fire code program element with local fire chiefs.

Are the Fire Code Hazard Classes required for one or more of the facilities covered under the Business Plan program?

This information is essential for fire agencies to properly administer and enforce the fire code, establish occupancy categories, and determine design and construction requirements, and mitigation measures for regulated facilities. The FCHCs may also be used to determine NFPA labeling and placarding requirements, evaluate first response actions, and establish on-site hazardous materials and waste management practices at the facility.

Is the Chief receiving the Business Plans in a timely manner from the CUPA?

If you are not sending the plans within 15 days of receipt and confirmation, has an agreed upon alternate means of information sharing between the CUPA and the Chief been established, approved, and documented?

Does the Chief have any special needs, or requirements to comply with the fire code HMMP/HMIS specifications that are not covered by the CUPA's Business Plan?

Is there any additional information, not in the CUPA's Business Plan, that would help consolidate the two plans (e.g., more detailed site maps, inventory format variations, lower chemical threshold limit quantities, piping diagrams, etc.)

Are there ways that the CUPA and fire agencies could coordinate and consolidate hazardous materials inventory inspections and enforcement actions?

Are there ways to minimize duplicative inspections and coordinate enforcement actions?

What types of meetings, task force groups, and committees, are there in the jurisdiction in which the CUPA and fire agencies could jointly participate to enhance and maintain communication, coordination, and consistency?

If you have any questions or comments, please contact Dennis Ryan, Unified Program Coordinator, at (916) 324-0232.

Pipeline Haz Mat Safety

The SFM's Pipeline Safety Division will be presenting a 30 - 45-minute "brown-bag" seminar overview on "Pipeline Environmental, Health, and Safety" at the next Northern California CUPA Forum meeting in Martinez on July 10, 2003, and at the next Central California CUPA Forum meeting on October 15, 2003 in Fresno. The session will raise awareness of federal, state, and local regulation covering interstate and intrastate transportation of hazardous petroleum products by pipeline in California.

Continuing Challenge HazMat Workshop

The 14th Annual Continuing Challenge HazMat Workshop is scheduled for September 2-5, 2003, at the Radisson Hotel in Sacramento. Brochures are available that provide information on workshop classes and registration information for the conference. Registrations will be accepted until the classes are full. For more information please visit the Continuing Challenge website: <http://hazmat.org/>

Fireworks

Health and Safety Code Sections 12723 and 12726 require the State Fire Marshal (SFM), upon proper notification from local authorities, to dispose of confiscated and dangerous fireworks. Current hazardous waste laws prohibit the disposal methods used by the SFM in years past. As a result, storage of seized fireworks has reached increased levels.

The SFM is working with State and local fire and law enforcement agencies to develop a plan for the disposal of seized or confiscated fireworks. The SFM has recently distributed a "Fireworks Seizure Inventory Form" to all local fire and law enforcement agencies within California. This will assist the SFM in identifying locations, type, and quantities stored so that we may properly dispose of these materials by a method that is environmentally safe.

The 2003 Safe and Sane Fireworks list is now available on SFM's website: <http://osfm.fire.ca.gov/>.

Life Safety Code Surveys

The SFM will be terminating its contract with the Department of Health Services effective July 1, 2003, and Life Safety Code surveys in health care facilities will be discontinued. A bulletin will be sent out later this month to provide additional information on the topic.

SFM Statutes and Regulations Class

An SFM Statutes and Regulations class was presented to both SFM and University of California Campus Fire Marshals on May 13-15 in Monrovia. The next class will be in Eureka, August 19-21. If you are interested in attending contact Ralph Altizer at (707) 825-2000. Additional classes are scheduled for the first two weeks of November in Apple Valley, and in March 2004 at the Joint North-South FPO meeting.

Fire Regulations for Scrap Tire Storage

The contract between California Integrated Waste Management Board and the SFM is moving forward. A legislative proposal is pending which will give the SFM the statutory authority to develop fire regulations for scrap tire storage. The first curriculum-working group has met and the outline for the new training program will be posted shortly on the SFM website. Any question regarding this program should also be directed to Rodney Slaughter at (916) 445-8454.

The Unified Program Section is interested in your comments and suggestions regarding the monthly newsletter. Please provide comments and suggestions to Anie Wilson at (916) 327-9559 or awilson@calepa.ca.gov.

[Cal/EPA Unified Program Home Page](#)



UNIFIED PROGRAM TRAINING CUPA-to-State Summary Report Requirements

Course Description: This course will provide the attendees with a better understanding of CUPA-to-State Summary Reports 1-4. This course will provide information on how to accurately complete each report, when and where to submit each report, and the methods available to submit the reports. This course will also provide information on locating electronic copies of the reports, finding key provisions, and defining key terms in the summary reports. In July, this course will be conducted as an internet based training course, with a conference component.

Course Instructor: Kathleen Harvey, Staff Environmental Scientist and Bridget Bonilla, Environmental Scientist, California Environmental Protection Agency (Cal/EPA), (916) 327-5097.

Who Should Attend: CUPA Managers and staff who have responsibilities related to completing and submitting any or all of the CUPA-to-State Summary Reports 1-4.

Course Level & Prerequisite: Beginning. Prerequisite attendance at a “pre-meeting” to assure that each video portion of the course is compatible with the attendees’ electronic system.

Registration Fees: There are no fees charged for attending this course.

To Register: You must register by sending an e-mail to Kharvey@calepa.ca.gov or Bbonilla@calepa.ca.gov, include your name, title, agency name, address, phone number, and number of attendees.

Class Dates & Time:

Pre-meetings

These are mandatory prior to attending the web training.

June 30, 2003	9:00 a.m.
July 3, 2003	9:00 a.m.

For more information visit CUPA Forum website at <http://www.calcupa.net/index.htm>



Web Training

July 9 th	8:00 a.m. – 12:00 p.m.
July 16 th	8:00 a.m. – 12:00 p.m.
July 23 rd	8:00 a.m. – 12:00 p.m.
July 30 th	8:00 a.m. – 12:00 p.m.

It is important that each person become familiar with the technology being used and the compatibility of each electronic system before trying to attend a training. Trainers will be happy to set up special dates for pre-meetings, if necessary to allow CUPAs to attend the Web Training.



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Department of Toxic Substances Control

Edwin F. Lowry, Director
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Gray Davis
Governor

MEMORANDUM

TO: Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch

FROM: James J. Grace
Staff Counsel

DATE: June 30, 2003

SUBJECT: Closure Costs for Permit By Rule and Conditionally Authorized
Facilities

BACKGROUND

Permit By Rule (PBR) and Conditionally Authorized facilities are required to estimate closure costs. If the estimated closure cost is equal to or less than \$10,000, financial assurance is not required. Some facilities have been estimating their closure costs based on the closure of individual units. The closure of individual units is, generally, less than \$10,000. The closure cost estimate for all units at a given facility normally aggregates above \$10,000.

QUESTION

May PBR and Conditionally Authorized facilities qualify for the exemption from financial assurance requirements by estimating closure costs for individual units as opposed to the entire facility?

CONCLUSION

PBR and Conditionally Authorized facilities may only qualify for the exemption from financial assurance requirements if the closure cost estimate for the entire facility is less than \$10,000.

DISCUSSION

California Code of Regulations, title 22, section 67450.13 states, in pertinent part:

(a)(1) The TTU owner or operator, FTU owner or operator, or a generator operating pursuant to a grant of Conditional Authorization shall prepare a written estimate of the cost of closing each unit. The estimate shall equal the actual cost or the costs estimated by an owner or operator or a generator that would be incurred for closing a treatment unit when using the owner or operator or generator's own staff and/or personal equipment. The closure cost estimate may take into account any salvage value that may be realized from the sale of wastes, facility structure or equipment, land or other facility assets. This estimate shall be submitted as an attachment to the Certification of Financial Assurance for Permit by Rule and Conditionally Authorized Operations page(s) of the Unified Program Consolidated Form (x/99)).

(d) If the closure cost estimate as specified in subsections (a)(1) and (a)(2) of this section is not more than \$10,000.00, the TTU owner or operator or FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization may comply with this section by submitting a certification signed in accordance with section 66270.11. The FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization shall submit the certification to its CUPA or the authorized agency, that the FTU owner or operator operating pursuant to permit by rule, or a generator operating pursuant to a grant of Conditional Authorization has sufficient financial resources to meet the closure cost requirements. . . .

The closure costs referred to in subdivision (a) are for "each unit." It could therefore be inferred that the \$10,000 exemption described in subdivision (d) is for "each unit" and not the facility as a whole.

The applicable statute, Health and Safety Code, section 25245.4, subdivision (b)(1)(B), broadly states the financial assurance rule, but does not address qualifications for the exemption. The statute merely refers to the regulations cited above for further specification:

On and after October 1, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the conditionally authorized units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d).

The regulation is ambiguous on its face. California Code of Regulations, title 22, section 67450.13, subdivision (a), can only be interpreted to apply to each unit of a facility. Subdivision (d), standing alone, could reasonably be interpreted to apply to either the facility as a whole or each unit within the facility. For the reasons stated below, the only interpretation possible, consistent with the requirements of statutory/regulatory interpretation, is that subdivision (a) refers to each unit within a facility and subdivision (d) refers to the facility as a whole.

A regulation is examined using the same standards as are applied in cases of statutory construction and interpretation. (*California Drive-In Restaurant Association v. Clark* (1943) 22 Cal.2d 287, *Consumer Cause, Inc. v. Weider Nutrition International, Inc.* (2001) 92 Cal.App.4th 363.)

If the words of the statute are ambiguous, a court “may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.” (*Guillemin v. Stein* (2002) 128 Cal.Rptr.2d 65)

The regulatory equivalent of legislative history is the Statement of Reasons. The Statement of Reasons supporting the adoption of California Code of Regulations, title 22, section 67450.13(d) states, in part:

This new subsection would establish an option for PBR or CA facilities whose closure cost estimate, is not more than, or equal to \$10,000, to certify by letter that they have sufficient funds to meet financial assurance obligations related to closure of their facilities.

The Statement of Reasons, then, clearly states that it is the *facility*, not the unit, that must have a closure estimate of \$10,000 or below in order to qualify for the exemption. Later, in the same paragraph the Statement of Reasons affirms that rule by stating:

For these reasons, DTSC proposes to allow a TTU or a FTU with estimated closure costs of not more than \$10,000, to certify that sufficient financial resources are available to meet closure cost requirements.

California Code of Regulations, title 22, section 66450.13, subdivision (a)(1), requires that the closure cost of each unit be separately stated, but this does not preclude a requirement that they be aggregated for the purposes of the exemption, or for all purposes other than reporting. Consistent with the Statement of Reasons, such a requirement is demonstrated by the remainder of subdivision (a) which requires a unitary closure cost estimate for the entire facility. Subdivision (a)(2) (which requires annual revision of the single closure cost estimate) and subdivision (a)(5) (which requires a single financial assurance mechanism for closure costs) make the aggregate requirement particularly clear.

Interpreting subdivision (d) to allow an exemption from the requirement for financial assurance, where closure cost estimates for "each unit" are less than \$10,000 regardless of the number of units or the closure cost for the facility, yields an absurd result. A facility consisting of one unit, with a closure cost estimate of \$11,000, would be required to make a demonstration of financial assurances. Another facility consisting of ten units, each with a closure cost estimate of \$9,000 (aggregating to \$90,000), would not be required to make that demonstration.

The California Supreme Court in *Horwich v. Superior Court* (1999) 21 Cal.4th 272 held:

"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898-899, 276 Cal.Rptr. 918, 802 P.2d 420.)

The statute and regulation must therefore be interpreted harmoniously and to avoid creating an absurd result. California Code of Regulations, title 22, section 67450.13 then must mean that the exemption applies only where the entire facility may be closed for \$10,000 or less. Only one interpretation is consistent both internally and with the requirements of statutory interpretation. That is the interpretation that a PBR or CA facility is only exempted from the requirement to establish and demonstrate financial assurance if the closure cost estimate for the facility as a whole is less than \$10,000.

cc: Sangat Kals
Steven Binning